

C-SCA-4972-2005-Y-1

Order dated 6th July 2005**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION No. 4972 of 2005****For Approval and Signature:****HON'BLE MR JUSTICE MR SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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**GUJARAT STATE ROAD TRANSPORT CORPORATION -
Petitioner(s)**

Versus

RAMESHBHAI AMBALAL CHAUHAN - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.
 NOTICE SERVED BY DS for Respondent No(s).: 1.
 MR GK RATHOD for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE MR SHAH**Date : 06/07/2005****ORAL JUDGMENT**

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In this petition under Article 226/227 of the Constitution of India, the petitioner, Gujarat State Road Transport Corporation has challenged the legality and validity of the judgment and award passed by the Industrial Tribunal, Ahmedabad dated 9.8.2004 in Reference (IT) No. 387 of 1994 by which the Tribunal has allowed the aforesaid Reference by quashing and setting aside four different punishments imposed by the disciplinary authority for 4 different alleged misconducts.

2. It appears from the record that the respondent workman had approached the Conciliation Officer by raising a dispute with regard to 4 different punishments for different misconducts. The first demand was with regard to the order dated 20th April 1998, the second demand was with regard to the order dated 29.2.1993, demand No.3 was with regard to the order of punishment dated 31st March 1992 and the demand No.4 was with respect to the order of punishment dated 25.2.1987. With regard to all the four demands there was a common Reference to the Industrial Tribunal, Ahmedabad for its adjudication which was numbered as Reference No. 387/1994. On appreciation of evidence and considering the documentary evidences produced on record, the

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Industrial Tribunal, Ahmedabad by its judgment and award dated 9.8.2004 allowed the entire Reference by quashing and setting aside all the aforesaid four orders. Feeling aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri Hardik Raval, learned advocate appearing on behalf of the petitioner corporation has mainly challenged the legality and validity of the judgment and award passed by the Industrial Tribunal with regard to demands No. 1 and 4 and quashing and setting aside the orders dated 20th April 1988 and 25th February 1987. He has submitted that the orders came to be passed in the years 1988 and 1987 respectively and the dispute was raised by the respondent workman for the first time in the year 1994 and the question with regard to delay and laches was raised by the petitioner Corporation also. He has also further submitted that the Industrial Tribunal has quashed and set aside the orders dated 20th April 1988 and 25th February 1987 with regard to demands No. 1 and 4 mainly on the ground that inspite of a specific order passed by the Tribunal the petitioner corporation has not produced any documents to

support their case. He has submitted that so far as non-production of the documents are concerned as the dispute was raised after a period of 7 years as per the practice the record after 5 years is destroyed and therefore the Corporation could not produce the same before the Industrial Tribunal. He has submitted that for the delay on the part of the respondent workman the Corporation should not suffer and therefore it is requested to allow the Special Civil Application qua Demands No. 1 and 4. He has further submitted that in any case the respondent workman should not be given the benefit of any arrears from the date of passing of the order till the making of Reference.

4. On the other hand, Shri Mukesh Rathod, learned advocate appearing on behalf of the respondent Corporation has tried to support the judgment and award passed by the Industrial Tribunal. He has submitted that the contention on behalf of the petitioner with regard to destroying the record after a period of 5 years was not pointed out and/or brought to the notice of the Industrial Tribunal more particularly when there was a specific order passed by the Industrial Tribunal to produce the records while passing the order below Exh. 24. Therefore it

is submitted that the said contention cannot be accepted. At this stage, he has also further submitted that so far as the delay part is concerned, the making of the Reference was not challenged by the respondent workman and even if the dispute is raised belatedly then in that case the relief can be moulded by denying the wages and/or arrears from the date of passing of the award till the dispute was raised and/or making the Reference. Under the circumstances it is requested to dismiss the Special Civil Application and/or to mould the relief accordingly.

5. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the order came to be passed by the Industrial Tribunal below Exh. 24 dated 9.8.2004 directing the petitioner Corporation to produce the documentary evidence and/or documents with regard to dispute, demands No. 1 and 4 and also the demands No. 2 and 3. Nothing was pointed out by the petitioner Corporation before the Industrial Tribunal showing their inability to produce the documents on the ground that the documents are destroyed after a period of 5 years. Under the circumstances, the contention on behalf of the petitioner Corporation that they might not have produced the documents

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because of the fact that every 5 years all the records are destroyed, cannot be accepted, at this stage. Shri Raval is right in making a grievance that when the order came to be passed in 1988 and 1987 and the dispute was raised after the period of 7 ½ years the respondent workman should not be given the benefit of his own wrong and the arrears should not be paid from the date of passing of the order till the Reference is made. In an appropriate case, when the dispute is raised belatedly the respondent workman can be denied the wages and/or arrears for the period for which there was inaction on the part of the respondent workman. Considering the aforesaid facts and circumstances, the judgment and award passed by the Industrial Tribunal is required to be modified to the extent that by quashing and setting aside the orders dated 20th April 1988 and 25.2.1987 respectively the respondent workman will not be entitled to the arrears for the interrugnum period of the aforesaid orders till the date of Reference.

6. For the reasons stated hereinabove, the judgment and award passed by the Industrial Tribunal, Ahmedabad, dated 9.8.2004 in Reference (IT) No. 387/1994 is modified to the extent that while

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quashing and setting aside the orders dated 20th April 1988 and 25th February 1987 it is directed that the respondent workman will not be entitled to any arrears from the date of passing of the impugned orders till their making a Reference. The arrears which are required to be paid as per the modified order should be paid by the petitioner Corporation as early as possible preferably from the date of 4 months from the date of receipt of this order. Rule is made absolute.

[M.R. Shah, J.]

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